

Congress of the United States
Washington, DC 20515

August 22, 2019

The Honorable Joseph J. Simons, Chairman
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Chairman Simons,

Thank you for your June 18, 2019 response to our May 23, 2019 letter concerning predatory online marketing directed to children. While we are pleased that you share our concern in protecting children from unfair and deceptive advertising practices online, your response only underscores the need for the Federal Trade Commission (FTC) to immediately investigate deceptive practices raised in our letter and issue guidance for online creators seeking to integrate advertising with online content directed to children.

Your June 18 response states that “[t]he need for clear and conspicuous disclosures can be particularly important for young children, who may have more difficulty distinguishing editorial content from advertising.”¹ Indeed, the leading current research shows that young children are unable to identify sponsored videos as commercials.² This is precisely why the FTC must take more action against marketers who are targeting this incredibly vulnerable and susceptible population with deceptive online advertising.

Based on your June 18 correspondence, we urge the FTC to promptly commence an investigation of Ryan ToysReview, one of the examples we raised in our May 23rd letter.³ The Ryan ToysReview YouTube channel is clearly directed at young children and, since our letter, has posted two undisclosed commercials for fast food restaurant Carl’s Jr.,⁴ as part of a partnership with the restaurant’s parent company.⁵ The Children’s Advertising Review Unit (CARU), an investigative unit of a self-regulatory program associated with BBB National Program’s Advertising Self-Regulatory Council, found that Ryan ToysReview failed to adequately disclose the commercial nature of some of its videos nearly two years ago.⁶ Despite Ryan ToysReview’s promises to “implement procedures to enhance disclosures of connections to brand marketers in accordance with CARU’s voluntary guidelines...,”⁷ Ryan ToysReview has plainly failed to cease its unfair and deceptive practices. Therefore, we urge the FTC to promptly commence an investigation.

The FTC must also update its guidance for online content directed at children. CARU’s TV-centric guidance, to which you refer us in your letter, was last updated in 2014 and does not reflect recent trends in media consumed by children, including the rise of social media influencers, ephemeral messaging apps, YouTube channels, and short-video apps like TikTok. The nature of online advertising through these new media fundamentally differs from CARU’s outdated guidance. Today’s video bloggers (“vloggers”) intertwine advertisements throughout their videos, “unboxing” videos can be one large advertisement, and discrete ads are more “native” than they can be on TV. As the example of Ryan ToysReview illustrates, influencers

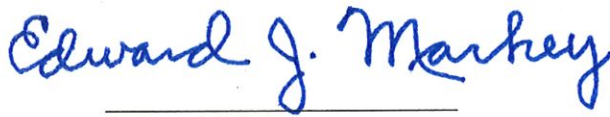
can easily ignore CARU decisions and continue to reap the financial rewards of their deceptive marketing practices.

As the FTC updates its Guides Concerning Use of Endorsements and Testimonials in Advertising, which it is scheduled to start reviewing in 2020,⁸ issuing guidance for online creators seeking to integrate advertising with online content directed to children is critical. The fact that “[i]t may be challenging to provide meaningful guidance that is not either too narrow ... or too broad,” as your June 18th letter suggests,⁹ is precisely why the FTC must not abdicate its authority and responsibility to provide guidance concerning online marketing to children.

Most gratefully,



Anna G. Eshoo
Member of Congress



Edward J. Markey
United States Senator



Kathy Castor
Member of Congress

cc: The Honorable Noah Joshua Phillips, Commissioner
The Honorable Rohit Chopra, Commissioner
The Honorable Rebecca Kelly Slaughter, Commissioner
The Honorable Christine S. Wilson, Commissioner

¹ Joseph J. Simons, “Letter to Representative Anna G. Eshoo,” June 18, 2019, at 2.

² Angela J Campbell, “Rethinking Children’s Advertising Policies for the Digital Age,” *Loyola Consumer Law Review* 29, no. 1 (2017): 38, <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2969&context=facpub>.

³ Anna G. Eshoo, Edward J. Markey et al., “Letter to FTC Chairman and Commissioners,” May 23, 2019.

⁴ Ryan ToysReview, *Ryan’s Drive Thru Pretend Play with Hardee’s New Star Pals Toys!!!*, June 19, 2019, https://www.youtube.com/watch?v=PkBy_d-kC3Y; Ryan ToysReview, *Ryan’s Star Pals Toys Kids Meal Surprise at Carl’s Jr. and Hardees*, June 30, 2019, <https://www.youtube.com/watch?v=EjffFankbIYA&t=1s>.

⁵ “Hardee’s Relaunches Star Pals™ Meals in Partnership with Pocket.Watch and Ryan’s World®,” *BusinessWire*, June 11, 2019, <https://www.businesswire.com/news/home/20190611005318/en/Hardee%E2%80%99s-Relaunches-Star-Pals%E2%84%A2-Meals-Partnership-pocket.watch>.

⁶ “CARU Examines YouTube Channel ‘Ryan Toys Review,’ Recommends More Prominent Disclosures of Ad Content,” *Children’s Advertising Review Unit*, October 18, 2017, <https://asrcreviews.org/caru-examines-youtube-channel-ryan-toys-review-recommends-more-prominent-disclosures-of-ad-content/>.

⁷ *Id.*

⁸ FTC Regulatory Review Schedule, 84 FR 18746: Appendix,
<https://www.federalregister.gov/documents/2019/05/02/2019-08936/regulatory-review-schedule>.

⁹ Joseph J. Simons, “Letter to Representative Anna G. Eshoo,” June 18, 2019, at 3